Hearing:
June 5, 1997

Paper No. 23
JQ

7/28/98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Isolab, Inc.
v.
Genzyme Corporation

Request for Reconsideration

Opposition No. 97,778
to application Serial No. 74/535,956
filed on June 8, 1994

Gail L. Morrissey and Roger Gilcrest of Standley & Gilcrest for Isolab, Inc.

William G. Gosz and F. Brad Salcedo for Genzyme Corporation.

Before Simms, Quinn and Hairston, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Board, in a decision dated April 14, 1998, sustained the opposition and refused registration to applicant. More specifically, the Board determined that opposer's mark LDL-DIRECT is neither deceptively misdescriptive nor deceptive, and that applicant's mark DIRECT LDL, when applied to applicant's goods, so resembles

opposer's previously used mark, as applied to opposer's goods, as to be likely to cause confusion.

Applicant has filed a request for reconsideration, and opposer has filed a response thereto.

The request for reconsideration is not well taken essentially for the reasons concisely set out by opposer in its responsive brief.

In reaching our decision, we considered, of course, the entirety of Mr. Hazlewood's testimony, including his statements regarding the use of opposer's mark LDL-DIRECT with opposer's company name. However, as pointed out by opposer, "the LDL-DIRECT trademark represents a separate source of the product, and there is no requirement that Opposer always use its house mark with its LDL-DIRECT mark." (brief, pp. 1-2) Indeed, one product can bear more than one trademark, and here the mark LDL-DIRECT, as actually used, would be recognized in and of itself as an indication of origin for opposer's goods. See, e.g.: Procter & Gamble Co. v. Keystone Automotive Warehouse Inc., 191 USPQ 468 (TTAB 1976); and Textron, Inc. v. Cardinal Engineering Corp., 164 USPQ 397 (TTAB 1969).

Regarding applicant's allegations of misdescriptiveness and deceptiveness, the Board, while expressing a doubt as to whether the issues were "tried," nevertheless took up these claims on the merits. And, upon further review, the Board

stands by its earlier assessment that applicant's proofs fall far short.

Decision: The request for reconsideration is denied, and the decision dated April 14, 1998 stands.

R. L. Simms

T. J. Quinn

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial
and Appeal Board